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FEDERAL ELECTION COMMISSION
Washington, DC 20463

Jun 15 1 14 PM '00

June 15, 2000

AGENDA ITEM
For Meeting of: 6-22-00

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
General Counsel

N. Bradley Litchfield
Associate General Counsel

Jonathan M. Levin
Senior Attorney

Subject: Draft AO 2000-13

Attached is a proposed draft of the subject advisory opinion. We request that this draft be placed on the agenda for June 22, 2000.

Attachment

1 ADVISORY OPINION 2000-13

2
3 John J. Duffy
4 Steptoe & Johnson
5 1330 Connecticut Avenue, N.W.
6 Washington, D.C. 20036-1795
7

DRAFT

8 Dear Mr. Duffy:

9 This responds to your letter dated May 25, 2000, on behalf of Ampex Corporation
10 (“Ampex”) and its wholly-owned subsidiary, iNEXTV Corporation (“iNEXTV”),
11 requesting an advisory opinion concerning the application of the Federal Election
12 Campaign Act of 1971, as amended (“the Act”) and Commission regulations to
13 iNEXTV’s proposed video coverage of the Republican and Democratic national
14 conventions over the Internet.

15 ***Background***

16 You state that Ampex, a for profit corporation, is one of the world’s foremost
17 innovators of video technologies. Ampex’s stock is publicly traded and widely held and
18 Ampex is not owned or controlled by a political party, political committee, or candidate.
19 One of Ampex’s wholly-owned subsidiaries is iNEXTV. According to information on
20 the web sites of Ampex and iNEXTV, iNEXTV holds Ampex’s Internet video
21 programming operations and controls a network of affiliates that webcast content,
22 including original content, for special interest public audiences. For example,
23 www.istyletv.com, based in New York City, provides news and information concerning
24 travel, sports, leisure activities and fashion; www.aetv.com, based in Los Angeles,
25 features news and information concerning the entertainment industry and classic
26 television shows, and www.exbtv.com (Executive Branch Television or “EXBTV”),
27 based in Washington, D.C., focuses on news and information about the Federal
28 government. iNEXTV’s web sites are supported by the sale of commercial
29 advertisements.

30 The EXBTV web site features original programming such as reports and
31 commentary by Hugh Downs on a wide variety of public affairs issues; and interviews
32 and discussions conducted by Mr. Downs or Jed Duvall with public officials, educators,

1 journalists, and presidential candidates. It also includes a "forum" whereby viewers may
2 state their opinions on specific issues via computer. The web site provides a special page
3 for each of a large number of cabinet departments and Federal agencies. From those
4 pages, the viewer can click on to video "events" such as meetings conducted by the
5 agency or speeches made by agency officials, or related news events. The page will also
6 include some basic information about the agency and a link to the agency's web site. The
7 web site provides the same feature for international organizations. The viewer may also
8 click on to Congressional hearings and floor debates and conferences of business leaders
9 (including a "live" feature). The web site also has a polling feature where viewers may
10 answer questions about specific issues, and the results are posted on the site.

11 iNEXTV intends to extend EXBTV's coverage of governmental affairs this
12 summer to include gavel-to-gavel coverage of the Republican and Democratic national
13 conventions. Its coverage will also contain interviews with political experts and
14 candidates, as well as commentary by Hugh Downs and Jed Duvall. You ask whether
15 iNEXTV's proposed coverage of the conventions falls within the scope of the Act's
16 exemption from the definition of contribution for news stories and commentaries by the
17 press.

18 *Analysis*

19 The Act prohibits "any corporation whatever" from making a contribution or
20 expenditure in connection with a Federal election. 2 U.S.C. §441b(a). The Act and
21 Commission regulations define the terms "contribution" and "expenditure" to include any
22 gift of money or anything of value for the purpose of influencing a Federal election. 2
23 U.S.C. §431(8)(A)(i) and (9)(A)(i); 11 CFR 100.7(a)(1) and 100.8(a)(1); *see also* 2
24 U.S.C. §441b(b)(2) and 114.1(a)(1) (providing a similar definition for "contribution or
25 expenditure" with respect to corporate activity). Commission regulations further define
26 "anything of value" to include all in-kind contributions and state that, unless specifically
27 exempted under 11 CFR 100.7(b), the provision of any goods or services (including
28 advertising services) without charge, or at a charge which is less than the usual and
29 normal charge for such goods or services, is a contribution. 11 CFR 100.7(a)(1)(iii)(A);
30 *see also* 11 CFR 100.8(a)(1)(iv)(A).

1 The Act specifically exempts from the definition of “expenditure”:

2 any news story, commentary, or editorial distributed through the
3 facilities of any broadcasting station, newspaper, magazine, or other
4 periodical publication, unless such facilities are owned or controlled
5 by any political party, political committee, or candidate.
6

7 2 U.S.C. §431(9)(B)(i).¹ Commission regulations similarly exempt from the definitions
8 of contribution and expenditure any “cost incurred in covering or carrying a news story,
9 commentary, or editorial by any broadcasting station (including a cable television
10 operator, programmer, or producer), newspaper, magazine, or other periodical publication
11 ... unless the facility is owned or controlled by any political party, political committee,
12 or candidate ...” 11 CFR 100.7(b)(2) and 100.8(b)(2).

13 Several factors must be present to conclude that the proposed activity falls within
14 the cited media exemption of the Act. First, the entity engaging in the activity must be a
15 press entity as described by the Act and regulations. *See* Advisory Opinions 1998-17,
16 1996-48, 1996-41, 1996-16 and opinions cited therein. Furthermore, in previously
17 applying the media exemption, the Commission cited two criteria, based on the statutory
18 exemption, that would be relevant to determining the scope of the exemption. These are
19 (1) whether the press entity is owned by a political party, political committee, or
20 candidate,² and (2) whether the press entity is acting as a press entity in performing the
21 media activity. Advisory Opinion 1982-44 (citing *Reader’s Digest Association v.*
22 *Federal Election Commission*, 509 F. Supp. 1210, 1215 (S.D.N.Y. 1981)); *see also*
23 Advisory Opinions 1998-17 and 1996-48.

24 The Commission concludes that, both as to their purpose and function, iNEXTV
25 and EXBTv are press entities for the purposes of the Act. Although iNEXTV does not

¹ According to the House report on the 1974 amendments to the Act, this exception made plain the Congressional intent that the Act would not “limit or burden in any way the first amendment freedoms of the press ...” and would assure “the unfettered right of the newspapers, TV networks, and other media to cover and comment on political campaigns.” *H.R. Rep. No. 93-1239, 93d Cong., 2d Sess. 4 (1974).*

² Commission regulations provide that, in the event the facilities are owned or controlled by a political party, political committee, or candidate, the exemption would still apply to the cost of a news story “(i) which represents a *bona fide* news account communicated in a publication of general circulation or on a licensed broadcasting facility, and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area ...” 11 CFR 100.7(b)(2) and 100.8(b)(2).

1 create programming under its own name, it operates its own network of specialized news
2 and information sites; these can be characterized as webcast video periodicals that can
3 provide a vast array of features due to the capabilities of the Internet. EXBTV provides a
4 news function for its viewers, incorporating features such as those provided by C-SPAN
5 (*see* Advisory Opinion 1996-48) and other televised news programming. The web site
6 provides direct access to governmental and business news events, and its two prominent
7 journalists generate reports, interviews, and commentary on current affairs. Moreover,
8 the web site is viewable by the general public and akin to a periodical or news program
9 distributed to the general public. *See* Advisory Opinion 1982-58.³

10 The Commission also concludes that the other criteria of the press exemption are
11 satisfied. Neither iNEXTV nor EXBTV are owned or controlled by any political party,
12 political committee, or candidate. Moreover, gavel-to-gavel coverage of national party
13 conventions that includes interviews and commentary by journalists, by an entity that
14 covers governmental and political affairs, readily fits into the categories of news story
15 and commentary set out in the Act. The Commission thus concludes that iNEXTV,
16 through its affiliate EXBTV, would not make a contribution or expenditure by engaging
17 in the proposed activities.

18 This response constitutes an advisory opinion concerning the application of the
19 Act and Commission regulations to the specific transaction or activity set forth in your
20 request. *See* 2 U.S.C. §437f. The Commission is mindful of the new capabilities and
21 options presented by use of the Internet. The Commission thus emphasizes that the
22 conclusions in this opinion are based on the specific facts and features described above

³ The Commission notes that it has previously indicated that a characteristic of periodicals qualifying as press entities is that they derive revenues from the sale of subscriptions or advertising. *See* Advisory Opinions 1988-22 and 1980-109. You state that iNEXTV's web sites are supported by the sale of commercial advertisements.

1 and are not necessarily applicable to other web sites and operators of those sites where
2 materially different facts or features are present.

3

4

Sincerely,

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6

Darryl R. Wold

7

Chairman

8

9 Enclosures (AOs 1998-17, 1996-48, 1996-41, 1996-16, 1988-22, 1982-58, 1982-44, and
10 1980-109)

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